

## § 10.912

## 20 CFR Ch. I (4–1–11 Edition)

(1) OWCP will then contact any living survivor(s) or alternate beneficiary(ies) it is able to identify.

(2) OWCP will furnish claim form CA-41 to any identified survivor(s) or alternate beneficiary(ies) and OWCP will provide information to them explaining how to file a claim for the death gratuity.

(c) Alternatively, any claimant may file a claim for death gratuity benefits with OWCP. Form CA-41 may be used for this purpose. The claimant will be required to provide any information that he or she has regarding any other beneficiaries who may be entitled to the death gratuity payment. The claimant must disclose, in addition to the Social Security number (SSN) of the deceased employee, the SSNs (if known) and all known contact information of all other possible claimants who may be eligible to receive the death gratuity payment. The claimant must also identify, if known, the agency that employed the deceased employee when he or she incurred the injury that caused his or her death. OWCP will then contact the employing agency and notify the agency that it must complete and submit form CA-42 for the employee. OWCP will also contact any other living survivor(s) or alternate beneficiary(ies) it is able to identify, furnish to them claim form CA-41, and provide information explaining how to file a claim for the death gratuity.

(d) If a claimant submits a claim for the death gratuity to an employing agency, the agency must promptly transmit the claim to OWCP. This includes both claim forms CA-41 and any other claim or paper submitted which appears to claim compensation on account of the employee's death.

### **§ 10.912 What is required to establish a claim for the death gratuity payment?**

Claim form CA-41 describes the basic requirements. Much of the required information will be provided by the employing agency when it completes notification form CA-42. However, the claimant bears the burden of proof to ensure that OWCP has the evidence needed to establish the claim. OWCP may send any request for additional evidence to the claimant and to his or

her representative, if any. Evidence should be submitted in writing. The evidence submitted must be reliable, probative, and substantial. Each claim for the death gratuity must establish the following before OWCP can pay the gratuity:

(a) That the claim was filed within the time limits specified by the FECA, as prescribed in 5 U.S.C. 8122 and this part. Timeliness is based on the date that the claimant filed the claim for the death gratuity under §10.911, not the date the employing agency submitted form CA-42. As procedures for accepting and paying retroactive claims were not available prior to the publication of the interim final rule, the applicable statute of limitations began to run for a retroactive payment under this subpart on August 18, 2009.

(b) That the injured person, at the time he or she incurred the injury or disease, was an employee of the United States as defined in 5 U.S.C. 8101(1) and §10.5(h) of this part, or a non-appropriated fund instrumentality employee, as defined in 10 U.S.C. 1587(a)(1).

(c) That the injury or disease occurred and that the employee's death was causally related to that injury or disease. The death certificate of the employee must be provided. Often, the employing agency will provide the death certificate and any needed medical documentation. OWCP may request from the claimant any additional documentation that may be needed to establish the claim.

(d) That the employee incurred the injury or disease in connection with the employee's service with an Armed Force in a contingency operation. This will be determined from evidence provided by the employing agency or otherwise obtained by OWCP and from any evidence provided by the claimant.

(1) Section 8102a defines "contingency operation" to include humanitarian operations, peacekeeping operations, and similar operations. ("Similar operations" will be determined by OWCP.)

(i) A "contingency operation" is defined by 10 U.S.C. 101(a)(13) as a military operation that—

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of [Title 10], chapter 15 of [Title 10], or any other provision of law during a war or during a national emergency declared by the President or Congress.

(ii) A "humanitarian or peacekeeping operation" is defined by 10 U.S.C. 2302(8) as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(iii) "Humanitarian assistance" is defined by 10 U.S.C. 401(e) to mean medical, surgical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, surgical, dental, and veterinary professionals, respectively, including education, training, and technical assistance related to the care provided; construction of rudimentary surface transportation systems; well drilling and construction of basic sanitation facilities; rudimentary construction and repair of public facilities.

(2) A contingency operation may take place within the United States or abroad. However, operations of the National Guard are only considered "contingency operations" for purposes of this subpart when the President, Secretary of the Army, or Secretary of the Air Force calls the members of the National Guard into service. A "contingency operation" does not include operations of the National Guard when called into service by a Governor of a State.

(3) To show that the injury or disease was incurred "in connection with" the employee's service with an Armed Force in a contingency operation, the claim must show that the employee incurred the injury or disease while in the performance of duty as that phrase

is defined for the purposes of otherwise awarding benefits under FECA.

(4)(i) When the contingency operation occurs outside of the United States, OWCP will find that an employee's injury or disease was incurred "in connection with" the employee's service with an Armed Force in a contingency operation if the employee incurred the injury or disease while performing assignments in the same region as the operation, unless there is conclusive evidence that the employee's service was not supporting the Armed Force's operation.

(ii) Economic or social development projects, including service on Provincial Reconstruction Teams, undertaken by covered employees in regions where an Armed Force is engaged in a contingency operation will be considered to be supporting the Armed Force's operation.

(5) To show that an employee's injury or disease was incurred "in connection with" the employee's service with an Armed Force in a contingency operation, the claimant will be required to establish that the employee's service was supporting the Armed Force's operation. The death gratuity does not cover federal employees who are performing service within the United States that is not supporting activity being performed by an Armed Force.

(e) The claimant must establish his or her relationship to the deceased employee so that OWCP can determine whether the claimant is the survivor entitled to receive the death gratuity payment according to the order of precedence prescribed in §10.907.

[75 FR 5501, Feb. 3, 2010]

**§ 10.913 In what situations will OWCP consider that an employee incurred injury in connection with his or her service with an Armed Force in a contingency operation?**

(a) OWCP will consider that an employee incurred injury in connection with service with an Armed Force in a contingency operation if:

(1) The employee incurred injury while serving under the direction or supervision of an official of an Armed Force conducting a contingency operation; or